Sectt. II-37—27,694—13-11

HOME (194) Department

SERIES.

G.O. No. 1577

Dated 21st May 1946.

[Despatch Abstract.]

PRISONERS - Release on medical grounds - Rule 514-A(2), P. & R Manual, Vol. II - Central Jail, Bellary - No. 9946, BOYA GADI LINGA alias GALI LINGA - Sanctioned.

VERY URGENT'

208847

JAIL DEPARTMENT.

From
F.E.Hitchin, Esq., M B.E.,
Inspector-General of Prisons,
M A D R A S.

To
The Secretary to Government,
Home Department,
M A D R A S.

ASSISTANT 19 MAY 1946 JAIL DEPARTMENT

No.795/S4/46. Dated 18th May 1946.

Sir,

Sub: Release on medical grounds - Central Jail, Bellary - C.No.9946, Boya Gadi Linga alias Gali Linga - Rule 514-A, Madras Prison and Reformatory Manual Volume II.

PK.No. 4

With reference to rule 514-A(2) Madras Prison and Reformatory Manual Volume II., I, herewith, submit the following papers relating to the prisoner mentioned above, for orders of Government:-

(1) Niminal roll.
(2) Medical case sheet.
(3) Medical Certificate.
(4) Certificate of fitness to travel.
(5) After-care certificate.
(6) Opinion of the District Magistrate.
(7) Copies of the judgments of the lower and appellate courts.

Patient is reported to be developing signs of Paresis with bed sores and is getting worse - and may be released.

INSPECTOR GENERAL OF PRISONS

ks.18/5.

FORM No. 52. (See Rule 879, Part I of Vol. II, M.P. and R.M.)

NOMINAL ROLL OF MALE* CONVICT No. 9946 †

Name Boya Gali Linga @ Gali Linga S/o Hanumappa.

Residence (Village, Taluk and District.) Basarakodu, Bellary, Bellary.

Caste Hindu Boya. Present age 6 x years. Occupation Cultivation.

Section and Code under which (1) 392(2) 6 of C.T.Act (2) 457 of 380 I.P.C. read with 23(1)a of C.T.Act (3) 457 of 380 I.P.C. read with 23(1)a of C.T.Act imprisoned. Police Station and Crime No. (1) 214 of Cowl Bazar Bellary P.Station (2&3) 89 & 92 of Gundalim police Station.

Original sentence of order and date. (1) One year R.I on 20-6-42 (2) Seven (7) Yrs R.I on 16-10-42 (3) 7 years R.I on 16-10-42 & 6 Mos Concurrently with the 2nd Sentence

Adjudicating Court and Calendar number of case. (1) Sub Divisional Magistrate Bellary in C.C. No 410 of 42. 293 Sessions Judge Bellary in S.C. Nos 232 & 246 of 42.

Unexpired term of sentence after deducting remission earned. 3 year(s) 5 Month(s) 14 Day(s).

Present state of health and fitness to undertake a journey.‡ Vide medical case sheet.

19-6-50.
16-5-46
3-1-4.
19-7-0
14-5-3

Judl.-(Jail-II)-27.

(P.T.O.

L+

Result of appeal (if any) { I & II declined / III dismissed.

Conduct in Jail Good

Personal and descriptive marks §

Remarks Ordinary 'C' Class Prisoner, Sikh - Mixed Education 'C' Remission Earned 229 days.

Strike out and add "Female" when necessary.

† After the prisoner's number, add his class A or B, according as he is classed as a Casual (and whether Star) or Habitual, respectively, and after the letter, add the number of previous convictions, thus—No. 3742 B-2.

‡ When a journey is about to be undertaken by a prisoner, the roll is to be signed by the Medical Officer.

§ Personal and descriptive marks are to be given when (1) rolls accompany prisoners transferred (2) police assistance is sought for the recapture of an escaped prisoner (Rule 549, Par and R.M.)

Bellary Central Jail, 16-5-1946.

MCH Superintendent.

[illegible] CASE SHEET.

[illegible] Soviet [illegible]. Boy [illegible] [illegible] [illegible]

1/6/46

Bell ry C[illegible]tral J il
H[illegible]pit[illegible]
D[illegible]ted 6th J[illegible]y 19[illegible]6.

-9-

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I, Dr. K. R[illegible]m[illegible]mur[illegible], [illegible]ial Officer, Central Jail, Bellary, hereby certify that Convict No.[illegible]2046 Daya Gadi Linga[illegible] li[illegible] Gali Linga[illegible] in [illegible]y opinion in danger of death from sickness not due to [illegible]xecution since there appears to be no chance of his recovery within or without the jail.

K. Ramalingam

[illegible].B., B.S.,
[illegible].D.P.H.S. (Eng.)
Civil Officer.

Certificate of fitness to travel.

This is to certify that convict No. 9946 Roy Gali Linga alias Gali Linga is in a fit state to travel.

He should be conveyed by a suitable conveyance with the assistance of two people.

Bell ay Central Jail Hospital,
Dated 16-5-1946.

M.B., B.S.,
F.R.C.S. (Edin.)
Medical Officer.

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Certificate under Rule 51-A(2).

I hereby certify that convict No.9946 Boya Gadi Linga alias Gali Linga, if released will be suitably cared for by his son, Gadi alias Gali of Bagarkode, Bellary taluk, Bellary district, who has given an undertaking to that effect.

Bellary Central Jail,
Dated 16-5-1946.

Superintendent.

L.Dis.875/46. Dated 13th May 1946.

From: Sri Rao Sahib R.D.Paul M.A.,
District Magistrate,
Bellary.

To
The Superintendent,
Central Jail, BELLARY.

Sir,

Sub:- JAILS - Central Jail - Release on Medical grounds - convict No.9946 - Boya Gadi Linga - orders - passed.

Ref:- 1. Your No.R.1467/46, dated 30-4-1946.
2. Your No.R.1572/46, dated 6-5-45.

===

I have no objection for the release of the convict No.9946 Boya Gali Linga on Medical grounds. The certificate of the Medical Officer is returned.

BVC.13.5. By order, (sd) S.V.Naidu,
For Dist.Magistrate.

Encl: One. Addl.Huzur Head Clerk.

In the Court of the Sub Divisional 1st Class Magistrate, Bellary,

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Present:- Sri.C.Vivekanandamurthy, B.A.,

C.C.No.41/42.

Judgment.

The accused, Boya Linga stands charged by the Moka Police with an offence under Section 22 (2) (b) of the Criminal Tribes Act.

2. Four witnesses have been examined for the Prosecution. P.W.1 is the Sub Inspector of Police, Moka. He deposed that the accused is a registered member of the Criminal Tribes of Boyas of Basarakodu village and filed extract of the Criminal Tribes Register relating to him (Exhibit A.). He also filed the notice requiring the accused to notify his change of residence, and also absence whether temporary or permanent to the village headman or the police, Moka (Exhibit B) and deposed that when he chan his residence or absented himself from his village he should take out a 'G' Pass and that on 25-12-41 he left his village without such pass and was O.V. till he was arrested by him on 5-6-42 in Sundaralam Hills. The witness swears that he went to Basarkodu a dozen times after 25-12-41 but could not find the accused in the village. P.W.2 is the Village Munsif having Juris diction over the village. He checked on 26-12-41 whether the accused was in the village and found him absent. He deposed that ever since, he ~~had~~ did not returned to the village and that he he had not taken out any pass from him permitting him to leave the village. P.W.3 Abdul Rahiman the Constable attached to the Moka Police Station deposed that he checked on 26-12-41 night whether the accused was in his village but found him absent and examined his son who stated that he did not know his whereabouts. P.W.4 filed the Calendar extract of the case in which the accused was convicted under Section 22 (2) (b) of the Criminal Tribes Act by the Sub Divisional Magistrate, Bellary in C.C.37/39 on the file of his Court and identified the accused as the one concerned with the case.

3. The accused admitted that he had left his village as

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he was being troubled by the Police.

4. There is no reason to disbelieve the P.Ws. nor the admission of the accused. They prove that the accused is a Criminal Tribes Member, that he was under an obligation to report his absence to the Village Munsif or the Police at Moka, that contrary to this he left his village and committed a breach of rule 11 under Section 20 Criminal Tribes Act. He was already convicted under Section 22 (2) (b) by the Sub Divisional Magistrate Bellary previously. A charge under Section 22 (2) (b) was framed against the accused to which he pleaded not guilty but neither further cross-examined the P.Ws. nor examined any defence witnesses. As the Prosecution evidence has not been rebutted I hold that the charge against him has been proved, and accordingly find him guilty of offence under Section 22 (2) (b) of the Criminal Tribes Act with which he stands charged and convict him accordingly and sentence him to undergo Rigorous Imprisonment for one year.

Pronounced in open Court.

(Sd.) C.Vivekanandamurthy,
Dated 20th June 1942.
Sub Divisional 1st Class Magistrate.

Sub Divisional 1st Class Magistrate.

C.B.R./22.6.

List of witnesses for.

Prosecution.	Defence.
1. Janab B.N. Mahaboob Sahib, Sub Inspector of Police.	Nil.
2. K.H. Krishnamurthy Rao, Village Munsif.	
3. Abdul Rahiman P.C.419.	
4. Narasappa - P.C.489.	

Exhibits.

A. Extract from the Register of Criminal Tribes.
B. Notification restricting the movements of Criminal Tribes members.
C. -do-
D. Arrest Warrant.
E. Proclamation under Section 87 Cr.P.C.
E-1. Order of the attachment under Section 88 Cr.P.C.
F. First Information Report.

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G. Calendar extract in C.C.37/39.

M.Cs.

Nil.

(True copy) (B.O)
J. Hawkins Magee
Head Clerk
Sub-Dml Magistrates
Court, Kellang

30.4.46

In the Court of Session of the Bellary Division.

—o—

Present:— E. E. MACK Esq., I. C. S., Bar-at-law, Sessions Judge.

Wednesday the 14th day of October 1942.

—o—

SESSIONS CASE No. 23 OF 1942.

Rex. vs. 1. Begari Gadi. 2. Begari Rama.
3. Gadi Linga alias Gali Linga.

Preliminary Enquiry No. 6 of 1942, committed by Sri M. Adikesavulu, Stationary Sub-Magistrate, Bellary.

Jury.
1. Mullangi Goolappa, Kamma, foreman.
2. Hulugappa, Vadde.
3. Kolur Sama Rao, Brahmin.
4. H. M. Sanna Basaiya, Lingayat.
5. Gattina Soogaiya, Lingayat.

Accused 3 was defended by Sri H. Hanumantha Rao, Advocate and accused 1 and 2 were undefended.

Against all the accused.

1. House-breaking by night in order to the commission of an offence punishable with imprisonment, under Section 457 I. P. C.

2. Theft in a building, under Section 380 I.P.C.

Against the 3rd accused.

3. Being a member of a criminal tribe liable for enhanced punishment under Section 23(1) (a) of the Criminal Tribes Act having had a previous conviction under Sections 457 and 380 I. P. C.

Plea. The accused plead not guilty to the 1st and 2nd charges and A. 3 pleads guilty to the 3rd charge.

Verdict of the Jury. Unanimous verdict of guilty against all the accused under Sections 457 and 380 I.P.C.

Sentence. *Accused 1 and 2*:— Each eighteen (18) months' rigorous imprisonment.

Accused 3:— Seven (7) years' rigorous imprisonment.

No.	Name of accused.	Father's name.	Caste or race.	Occupation.	Residence.	Age.
1.	Begari Gadi.	Narasingappa.	Begari.	Cooly.	Gulyam. Alur Taluk.	30.
2.	Begari Rama.	Thippanna.	do.	Cultivator.	do.	70.
3.	Gadi Linga alias Gali Linga.	Hanumappa.	Boya.	do.	Basarakodu, Bellary Taluk.	70.

DATE OF:—

1.	Occurrence.	...	... 9—2—1942.
2.	Complaint.	...	... 10-2—1942.
3.	Arrest or appearance.	... As. 1 and 2 on	28—5—1942.
		... A. 3 on	5—6—1942.
4.	Commitment.	...	... 22—9—1942.
5.	Receipt of committal order	...	... 27—9—1942.
6.	Release on bail.	...	... .
7.	Commencement of trial.	...	... 13—10—1942.
8.	Close of trial.	...	... 14—10—1942.
9.	Explanation for delay.	The delay in the lower Court was due to a number of adjournments there. No delay in this Court.	

CHARGE TO THE JURY.

—o—

Gentlemen of the Jury,

1. The three accused are charged under Sections 457 and 380 I. P. C. with breaking into the house of Illuri Lakshmayya (P.W. 1) at Kuditini on the night of 9-2-1942 and committing theft.

2. I shall first explain to you the law. Section 457 I. P. C. is the offence of house-breaking by night. Whoever breaks into a house by night with the intention of committing theft commits this offence. House-breaking can be committed in various ways. It is sufficient in this case if I tell you that a man who effects entry into a house by making a hole in a wall commits house-breaking. Section 380 I. P. C. is theft in a building. You all know what simple theft is. It is the dishonest removal of property from the possession of a person without his consent. A person is said to do a thing dishonestly if he intends to cause wrongful loss to one person or wrongful gain to another.

3. Now in this case as you have seen the Police recovered property on 26-5-1942, that is more than three months after the offence. The Circle Inspector reported this case in the first instance as undetectable. It depends on the recovery of items of stolen property from the possession of the accused or traced to their possession subsequently. In many cases of theft by night it is impossible to expect direct evidence of eye-witnesses. Guilt can only be brought home to culprits by tracing stolen property to their possession. So under Section 114 of the Indian Evidence Act you are entitled to draw a presumption that a person found in possession of stolen property soon after the theft is either the thief or a receiver of stolen property unless he can satisfactorily account for his possession. A person who dishonestly receives stolen property knowing it to be stolen is guilty of an offence under Section 411 I. P. C. The inference you may draw depends on the facts and circumstances of each case, the quantity of the property recovered, their value, their nature and so on.

4. The actual evidence of the house-breaking is given by P.W. 1. He was a clerk in a ginning factory at Kuditini and lived in a house with P. W. 4 and his children in the factory compound. On the morning of 10-2-1942 a man-hole was discovered in the wall of a room in which the family valuables including Rs. 100/- in cash were kept in five boxes. All the boxes with their contents were found missing. The Village Magistrate (P. W. 6) heard from Talayaris that some boxes were strewn about the garden of Jeera Eranna. He went there and recovered these boxes

with their padlocks all broken (M. Os. 1 to 7) and their contents missing. P. W. 1 made a complaint, Ex. A, in which he generally described the articles that were stolen. The Circle Inspector (P. W. 2) visited the village and has told you that his investigation gave him no clue and therefore he referred this case as undetectable. He has told you further that other burglaries took place in his jurisdiction culminating in another house-breaking at Kuditini on 20-5-1942 in a house quite close to that of P. W. 1. While investigating that case he got information which led him to search the houses of As. 1 and 2 in Gulyam, a village 29 miles from Kuditini by road via Bellary. But by direct cart-track the distance is only 18 miles.

5. In the house of A. 1 P. W. 1 says he found four differently coloured bodices and a red bordered pancha (M. Os. 8 to 12) hidden in the roof. A little later A. 1 after his arrest confessed that he had pledged a stolen sari with Dasari Gangamma (P. W. 7). On being sent for she produced M. O. 27 which she has told you A. 1 had pledged to her for Rs. 8/-. A. 1 also told the Inspector that he sold three silver kadiyams to Adoni Husain Sahib (P. W. 8), a goldsmith of Gulyam. P. W. 8 has told you that he bought them for Rs. 4-10-0, melted them down into 9 tolas of silver, three of which he put into a waist-belt (M. O. 34) which he made for Javali Nagaiya (P. W. 9) and six of which he put into silver chains (M. O. 35) which he made for Chakala Gangappa (P. W. 10). P. W. 9 and 10 say they gave P. W. 8 fifteen and six tolas of silver respectively and produced M. Os. 34 and 35 before the Police. They are obviously entitled to the return of these jewels. To complete then the evidence against A. 1 P. W. 11 deposes that A. 1 pledged M. Os. 29 to 31 to him for Re. 1/-. You will remember that these M. Os. and M. O. 28 were produced before the Inspector, according to him, when he examined P. W. 11 on information given by A. 2 after his arrest. This concludes all the items of stolen property which according to the prosecution were traced to the possession of A 1. He and A. 2 are Begaris. They are, as you know, undefended. A. 1 merely denies the entire case against him, the recovery of any M. Os. from his house and the pledge of M. O. 27, 29, 30 and 31. He however says that it is true that he sold silver jewels to P. W. 8 but claims that they were his.

6. Coming next to the case of A. 2 in a search of his house at Gulyam that same day the Inspector discovered M. Os. 13, 14 and 15 in a box. A panchanama for this recovery, Ex. D like the panchanama, Ex. C, for the recovery of M. Os. 8 to 12 were both attested by the Village Magistrate of Gulyam (P. W. 12). During the search of A. 2's house the Inspector has told you that his daughter began to run away, that she was caught by a constable and in her possession he found ten 10 rupee currency notes which have however no connection with the present case. He then says he questioned A. 2's son, aged 14, who took him to the hayrick of one Balappa and pointed out a tin box concealed there containing M. Os. 16 to 26. A panchanama for this recovery has been read to you, Ex. E. Then after A. 2 was arrested the Inspector says he told him that he pledged a stolen sari (M. O. 28) to Dasara Anjaneya (P. W. 11) who produced M. Os. 28, 29, 30 and 31. P. W. 11 has told you that A. 2 pledged M. O. 28 with him for Rs. 13/-. This concludes the property alleged to have been traced to the possession of A. 2. A. 2 like A. 1 denies all knowledge of the articles found in his house. He denies having pledged M. O. 28 to P. W. 11 and says the Police beat his son, put M.Os. 16 to 26 in the hayrick and made him point them out. He also suggests that his wife had a seven months' old baby in her arms which died when the Police beat his wife. The Inspector has told us that he had heard of no such incident, and D. W. 2, A. 2's cousin, whom he examined as a witness says his baby died some days after the Police left the village. He and D. W. 1 merely say that A. 2 lives by cultivation.

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7. I now come finally to the case of A. 3 who alone has been defended by Mr. Hanumantha Rao. He is a Boya living in Basarakodu village in the jurisdiction of the Sub-Inspector of Moka Police Station (P. W. 3). He has told you that he arrested A. 3 on 5-6-1942 in a house-breaking case and that after his arrest he confessed that he had given a pair of gold earrings with white stones (M. O. 32) and a pair of gubi bavali or ear ornaments to one Jalipati Honnurugadu (P. W. 13). He sent for P. W. 13 who produced these two ornaments. A panchanama, Ex. F, for this recovery is attested by, P.W. 14. P. W. 13 in the witness box has given some prima facie curious evidence, namely that A. 3 gave him M. Os. 32 and 33 along with some other articles and also Rs. 200/- for safe custody about two months before the Police sent for him.

8. As regards M. O. 33 P. W. 1 and P. W. 4 have both identified it as an ornament which was pledged to them by Begari Kanakamma (P. W. 5) for Rs. 2/-. There is a complication about this jewel which is nowhere described in Ex. A which however describes M. O. 32 as a kammalu containing seven white stones. Mr. Hanumantha Rao lays stress on the omission of M. O. 33 in Ex. A and has urged before you that as it was an ornament pledged to them P. W. 1 was not likely to forget it. A person however may be more likely to remember articles of his own which he has lost than those of other persons. There is a further difficulty about M. O. 33 which I must point out to you. It would appear that M. Os. 32 and 33 were mixed up with other jewels and shown to P.W.1 for identification in the Sub Magistrate's Court on 9-6-42. According to a panchanama, Ex. L, attested by the magisterial clerk (P. W. 15) P. W. 1 identified only M. O. 32. M. O. 33, according to another panchanama, Ex. M, attested by P. W. 15 was shown to one Eravva on 12-6-42 and identified by her. The prosecution are unable to say who this woman Eravva was. The learned Public Prosecutor suggests that she may be Kanakamma's mother and that the constable may have made some mistake. However this may be we have this woman Kanakamma coming into the witness box as P. W. 5 and swearing that M. O. 33 is her ornament which she pledged to P. Ws. 1 and 4 who in this respect bear her out. Ex. M was filed only to-day and the Eravva complication was discovered only at the end of the trial. The evidence is there on which you have to decide whether you are satisfied beyond all reasonable doubt as to whether M. O. 33 was a jewel stolen from the house of P. W. 1 on the night of 9—2—42.

9. As regards the kammalu with white stones (M.O. 32) Mr.Hanumantha Rao has laid in my opinion unnecessary stress on an interpolation of the word "Thella" in the first complaint, Ex.A. This does not appear in the carbon copy, Ex. I, of the first information report. Much has been made of the disappearance of the first complaint to the Magistrate but the magisterial clerk has explained to you that the reports from the Village Magistrate of this village kept coming in on extremely brittle paper which kept crumbling up. He brought to Court and has showed us the original report book from this village which the village Magistrate was made to return by the Tahsildar. The paper in it as you have seen is very brittle and was all crumbling away. There is a further difficulty stressed about M. O. 32. It is described in Ex. A as a kammalu with white stones and with lolaks or pendants, with blue stones in the middle. There are however no pendants present in M. O. 32. They may of course as the prosecution suggests have been removed.

10. In all these circumstances it is for you to decide whether you are satisfied with the identification of M. Os. 32 and 33 by P. Ws. 1 and 4 as their jewel which was stolen from their house that night. Mr. Hanumantha Rao has urged that these are ear ornaments which are worn by many women. On the other hand a woman can generally be relied upon to identify an ornament which she has worn. As against A. 3 there is no other evidence except the recovery of M. Os. 32 and 33 alleged to have

been effected on a confessional statement made by him that he gave these M. Os. along with other property and Rs. 200/- in cash to this most suspicious individual (P. W. 13) whose evidence on his own showing makes him out to be a man who received valuables for safe custody from persons about whom he knows very little.

11. I have now given you the evidence separately against As. 1, 2 and 3. The case against them depends solely on property alleged to be stolen being traced to their possession. You have seen the M. Os. produced in this case. They are jewels, saris, childrens' garments, cloths and household articles identified by P. Ws. 1 and 4. It is for you to say whether you believe that these articles were in fact stolen property. Then you have to satisfy yourselves that these articles were in fact traced, as the prosecution alleged, to the possession of these three accused. A difficulty in this case is that the property has been recovered more than three months after the offence. But that is not a long period which need necessarily prevent you from drawing the presumption you are perfectly entitled to draw under section 114 of the Evidence Act. It is your duty to give the case of each of these three accused separate consideration and if you have any reasonable doubt you should give him the benefit of it. Please remember that it is the duty of the prosecution to prove its case conclusively against each of them.

VERDICT OF THE JURY.

The jury returned a unanimous verdict that all the accused are guilty under sections 457 and 380 I. P. C.

(Signed). E. E. MACK.
Sessions Judge.

ORDER:—

I agree with the verdict of the jury. A. 3 pleads guilty to a charge under Section 23 (1) (a) of the Criminal Tribes Act. He was sentenced to four months' rigorous imprisonment on 26-7-1932 after registration under the Criminal Tribes Act on 30-7-1942.

I sentence A. 3 to seven years' rigorous imprisonment and As. 1 and 2 to 18 months' rigorous imprisonment.

Particulars of previous conviction against accused 3.

No.	Name of Court.	No. of calendar.	Date of conviction.	Section I. P. C.	Sentence.
1.	Stationary Sub-Magistrate, Bellary.	C. C. No. 368 1931.	26-7-1932.	457 and 380	Four months rigorous imprisonment.

(Signed). E. E. MACK,
Sessions Judge.

Note:—As. 1, 2 and 3 have been committed to the Central Jail, Bellary.

The following witnesses were examined:—

For the Prosecution.

1. Illuri Lakshmayya.
2. M. Ramaiya (C. I.).
3. B. N. Mahboob (S. I.)
4. Seethamma.
5. Begari Kanakamma.
6. T, DoddanaGowd (V.M. of Kuditini).
7. Dasari Gangamma.
8. Adoni Hussain Sahib.
9. Javali Nagaiya.
10. Chakala Gangappa.
11. Dasara Anjaneya.
12. Lingana Gowd (V. M. of Gulyam).
13. Jalipati Honnurugadu.
14. Lingana Gowd.
15. C. Raghavendra Rao (M.C.)

For the Defence.

1. Lakshmaiya. 2. Settappa.

The following exhibits were filed:—

For the Prosecution.

A/10—2—1942.	Statement of Illuri Lakshmaiya (P. W. 1) before the Village Magistrate.
B/5—4—1942.	Notice served by the Police on P. W. 1 treating his complaint as undetectable.
C/26—5—1942.	Search list of articles found in the house of A. 1.
D/26—5—1942.	Do. do. A. 2.
E/26—5—1942.	Panchanama for the production of property by the son of A. 2.
F/5—6—1942.	Panchanama for the production of M. Os. 32 and 33 and other property by Jalipati Honnurugadu.
G/10—2—1942.	Report sent by the village Magistrate of Kuditini to the Police.
H/28—5—1942.	Panchanama for the identification of M. Os. 1 to 31 by P. W. 1.
J/26—5—1942.	Panchanama for the production of M. O. 27 by the father of P. W. 7.
K/26—5—1942.	Panchanama for the production of M. Os. 28 to 31 by P. W. 11.
L/9—6—1942.	Panchanama for the identification of M. O. 32 by P. W. 1.
M/12—6—1942.	Panchanama for the identification of M. O. 33 by Begari Eravva.
N.N(1) & N(2) 29-8-42, 7-9-42 and 18—9—1942.	Statements made by accused 1 to 3 in the committing court.

For the Defence.

I/10—2—1942.	Copy of the First information report embodying the report of the Village Magistrate of Kuditini.

Material Objects produced in evidence.

1. Trunk.
2. Broken lock of M. O. 1.
3. Trunk.
4. Broken lock of M. O. 3.
5. Wooden box.
6. Lock of M. O. 5.
7. Tin box.
8. Rose coloured lace flowered square cloth.
9. Rose coloured bodice with green border.
10. Blue coloured bodice.
11. Green Pappali bodice.
12. Pancha with green and red borders.
13. White Pancha with chacolate coloured border.
14. Towel with black and green borders.
15. Khadi half-arm.
16. Silk bodice with violet stripes.

17. Silk bodice with yellow and green squares.
18. Violet coloured cheeti cloth.
19. Cheeti frock.
20. Pavada with yellow squares.
21. Two porcelain saucers and one cup.
22. A small brass toy bucket.
23. A small toy brass chembu.
24. A small brass toy flower basket.
25. A small brass toy gokarna.
26. Five small brass toy pranathis.
27. Kanchi pappali silk sari.
28. Silk sari with big squares.
29. New pancha with lace border.
30. Rose coloured silk gown.
31. Poplin bodice.
32. A pair of gold ear-rings with 7 white stones in each.
33. A pair of gold gubbi bavali.
34. A silver waist belt.
35. A pair of silver leg chains.

(Ild.) E. E. M.
Sessions Judge.

(True copy).

Sheristadar.

Number of words 3334 Charges Rs. 4—14—0.

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In the Court of Session of the Bellary Division.

Present:—E. E. MACK Esq., I. C. S., Bar-at-law, Sessions Judge.

Friday the 16th day of October 1942.

SESSIONS CASE No. 24 OF 1942.

Rex. vs. 1. Begari Rama. 2. Gadi Linga alias Gali Linga. 3. Boya Amarayya.

Preliminary Enquiry No. 7 of 1942, committed by Sri M. Adikesavulu, Stationary Sub-Magistrate, Bellary, Bellary District.

Jury.
1. Jampaji Rao, Mahratta, foreman.
2. Rangana Gowd, Lingayat.
3. Rasool Khan, Mohammedan.
4. U. Sitaram, Ballal, Brahmin.
5. J. B. Ellis, Christian.

Accused 2 and 3 were defended by Sri H. Hanumantha Rao, Advocate and accused 1 was undefended.

Against all the accused.

Charges.

1. House-breaking by night in order to the commission of an offence punishable with imprisonment, under Section 457, I. P. C.

2. Theft in a building, under Section 380 I.P.C.

Against the 2nd accused.

3. Being a member of a criminal tribe liable for enhanced punishment under Section 23(1)(a) of the Criminal Tribes Act having had a previous conviction under Sections 457 and 380 I. P. C.

Plea. The accused plead not guilty to the 1st and 2nd charges and A. 2 pleads guilty to the 3rd charge.

Verdict of the Jury. Unanimous verdict of guilty against all the accused under Sections 457 and 380 I.P.C.

Sentence. *Accused 1 and 3*:— Each eighteen months rigorous imprisonment-the sentence on A. 1 and that passed on him in S. C. 23 of 1942 on the file of this court will be consecutive.

Accused 2:—Seven (7) years' rigorous imprisonment-the sentence to run concurrently with the sentence imposed on him in S. C. 23 of 1942 on the file of this Court.

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No.	Name of accused.	Father's name.	Caste or race.	Occupation.	Residence.	Age.
1.	Begari Rama.	Thippanna.	Begari.	Cultivation.	Gulyam, Alur Taluk.	70.
2.	Gadi Linga alias Gali Linga.	Hanumappa.	Boya.	do.	Basarakodu, Bellary Taluk.	70.
3.	Boya Amarayya.	Hulugappa.	do.	do.	Jangamara Hosahalli, hamlet of Gulyam, Alur Taluk.	30.

DATE OF:—

1. Occurrence.	...	...	9—2—1942.
2. Complaint.	...	...	21—5—1942.
3. Arrest or appearance.	As. 1 and 2 on	...	28—5—1942.
	... A: 3 on	...	24—6—1942.
4. Commitment.	...	...	22—9—1942.
5. Receipt of committal order.	...	...	27—9—1942.
6. Release on bail.	...	...	.....
7. Commencement of trial.	...	....	15—10—1942.
8. Close of trial.	...	...	16—10—1942.
9. Explanation for delay.	...	The delay in the lower Court was due to several short adjournments three of which were to suit the prosecution and two were on account of transfer of the enquiring magistrate. No delay in this Court.	

CHARGE TO THE JURY.

Gentlemen of the Jury,

1. The three accused are charged under Sections 457 and 380 I. P. C. with breaking into the house of Begari Nagappa (P. W. 1) at Kuditini on the night of 9–2–1942 and committing theft.

2. I shall first explain to you the law. Section 457 I. P. C. is the offence of house-breaking by night. Whoever breaks into a house by night with the intention of committing theft commits this offence. House-breaking can be committed in various ways. It is sufficient in this case if I tell you that a man who effects entry into a house by making a hole in a wall or roof commits house-breaking. Section 380 I. P. C. is the offence of theft in a building. You all know what simple theft is. It is the dishonest removal of property from the possession of a person without his consent. A person is said to do a thing dishonestly if he intends to cause wrongful loss to one person or wrongful gain to another.

3. Now in many cases of theft by night it is impossible to expect direct evidence of eye witnesses. Guilt can only be brought home to culprits by tracing stolen property to their possession. So under Section 114

of the Indian Evidence Act you are entitled to draw a presumption that a person found in possession of stolen property soon after the theft is either the thief or a receiver of stolen property unless he can satisfactorily account for his possession. A person who dishonestly receives stolen property knowing it to be stolen is guilty of an offence under Section 411 I. P. C. The inference that you may draw depends on the facts and circumstances of each case, the quantity of the property recovered, their value, their nature and so on.

4. The actual evidence about the house-breaking is given by Begari Nagappa (P. W. 1). He was sleeping outside his house with his family when, thieves broke into his house by breaking a sky-light and making a hole in the roof. Next morning he discovered this and the contents of a large wooden box were found missing. He sent for the Village Magistrate (P. W. 2) and gave him a complaint, Ex. A, which describes the property lost including cash of Rs. 1100/-. According to him he lost Rs. 400/- in cash and Rs. 700/- in currency notes. Four or five days later P. W. 1 picked up in a grain basket under the sky-light a tin box (M.O.5) containing a gold kattani (M.O. 5(a)) mentioned in Ex. A which the thieves had apparently dropped in their flight.

5. Coming next to the Police investigation the Inspector has told you that he could get no clue in this case till the night of the 25th May when he got information which took him to Gulyam, a village 29 miles from Kuditini by road though by direct cart-track the distance is only 18 miles. At Gulyam on 26-5-1942 he searched the house of A. 1. He has told you that during the search A. 1's daughter aged about 11 was seen running out of the house. She was caught by a constable (P. W. 9) who found on her person ten 10 rupee currency notes (M.O.7) in the folds of her sari and a green shirt (M. O. 1). Ex. D is a panchanama for this recovery attested by the Village Magistrate of Gulyam (P.W.8). A.1 was not at home during the search but the Inspector arrested him that night and on being questioned made a confession that he had buried a bag with Rs. 70/- in it which he received as his share of booty in this case. The Inspector has told you that he took him and panchayatdars to a field and dug out this waist-bag (M. O. 6) which was found to contain 70 rupee coins. P. W. 1 has identified M. O. 1 and M. O 6 as his. A panchanama for this discovery is Ex. E. That concludes the evidence against A. 1.

6. The next person arrested was A. 2 by the Sub-Inspector of Moka (P. W. 4) on 5-6-1942. He has told you that A. 2 whom he arrested while he was investigating another case in Moka limits told him that he had secreted Rs. 160/-, his share of the booty in the present house-breaking case with one Jalipati Honnurugadu (P. W. 5). The Sub-Inspector says he took A. 2 to the house of P. W. 5 who produced Rs. 160/- (M.O.9) and P. W. 5 himself has told you that A. 2 gave him this money for safe custody. This discovery is evidenced by a panchanama, Ex. H. This is all the evidence against A. 2.

7. A. 3 although he was suspected by the Sub-Inspector early in the case was absconding and not arrested till 23-6-1942 by the constable (P. W. 9) in a village near Bellary. The Inspector has told you that when he was produced before him and interrogated he made a confession saying that he kept Rs. 180/-, his share of the booty in this case with one Boya Hanumanthu of his village and that A. 3 took him to the house of Hanumanthu who produced this money. Hanumanthu himself has told you as P. W. 7 that A. 3 deposited this money with him one day when he asked him for a small loan of Rs. 20/- and asked him to keep it for him. Ex. F. is a panchanama for this recovery. The Inspector has told you that A. 3 took him also to Hanumanthu's rickyard and dug out from there a brass tiffin box (M.O.4) found to contain one silver bangle (M.O.2) and two

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gold padakams (M. O. 3) and some other property not connected with this case. A panchanama for this discovery is Ex. G. All these panchanamas have been attested by respectable witnesses and there are no grounds for suspecting their genuineness. P. W. 1 has identified as his property the brass vessel (M. O. 4) and also M. Os. 2 and 3. A point I must bring out to your notice is that the brass vessel (M. O. 4) is not specifically mentioned in Ex.A. But the kadiyam is mentioned there and P.W. 1 has explained that he referred to the padakams in Ex. A as "half a tola". But Ex. A refers to a pair of meti- muruvu half a tola in weight. These have not been recoverd.

8. A. 1 who is undefended claims the Rs. 100/- recovered from his daughter and also the bag containing Rs. 70/- (M. O. 6) to be his. He denies that his daughter was caught running away and suggests that the Police have put this case up falsely against him. As. 2 and 3 have been defended by Mr. Hanumantha Rao who has in this case addressed you at great length. A. 2 suggests that a false case has been foisted on him by the machinations of a Village Magistrate one Krishnamoorthi Rao who is not on good terms with him. He denies in toto that he ever gave Rs. 160/-to Jalipati Honnurugadu (P. W. 5). A. 3 on the other hand admits that he gave Rs. 180/- to Hanumanthu (P. W. 7) for safe custody and suggests that the Village Magistrate of his village owing to some enmity implicated him in this false case. The main burden of Mr. Hanumantha Rao's argument to you has been that the coins and the notes recovered by the Police are not identifiable. But there is the very important consideration against the accused that these recoveries were made on information given by them, and there is further against As. 2 and 3 the specific evidence of P. Ws. 5 and 7 respectively. Altogether in this case Police recovered Rs. 510/- out of Rs. 1100/- lost and there is ample legal evidence before you, that is if you accept the prosecution case in all details, from which you can reasonably infer that the money recovered by the Police on information given by As. 1, 2 and 3 represents the cash stolen from the house of Begari Nagappa that night. P. Ws. 5 and 7 are on their own showing suspicious characters, and appear to have received substantial money from As. 2 and 3 under very suspicious circumstances. There is no other evidence against the accused whose case should receive separate consideration at your hands. If you have any reasonable doubt as regards the guilt of any of them you should give them the benefit of it for please remember that it is the duty of the prosecution to prove its case conclusively against each of these accused.

9. Please retire and consider your verdict and try to be unanimous if you can.

VERDICT OF THE JURY.

The jury returned a unanimous verdict that all the accused are guilty under Sections 457 and 380 1. P. C.

(Signed). E. E. MACK,
Sessions Judge.

ORDER:—

I agree with the unanimous verdict of the jury.

A. 2 pleads guilty to a charge under Section 23(1) (a) of the Criminal Tribes Act. He was sentenced on 26-7-1932 by the Sub Magistrate, Bellary under Sections 457 and 380 to four months' rigorous imprisonment. I sentenced him in S. C. 23 of 1942 this week to 7 years' rigorous imprisonment after a second conviction. I sentence him under Sections 457 and 380 I. P. C. and 23 (1) (a) of the Criminal Tribes Act to 7 years' rigorous imrisonment, the sentence to run concurrently with the sentence imposed on him in S. C. 23 of 1942.

I sentence A. 1 and A. 3 to undergo 18 months' rigorous imprisonment. The sentence on A. 1 and that passed on him in S. C. 23 of 1942 will be consecutive.

Particulars of previous conviction against accused 1.

No.	Name of Court.	No. of calendar.	Date of conviction.	Section. I.P.C.	Sentence.
1.	Stationary Sub-Magistrate, Bellary.	C.C. No. 368 of 1931.	26-7-1932.	457 & 380.	Four months' rigorous imprisonment.

(Signed). E. E. MACK,
Sessions Judge.

Note:— As. 1, 2 and 3 have been committed to the Central Jail, Bellary.

The following witnesses were examined:—

For the Prosecution.

1. Begari Nagappa.
2. T. Doddana Gowd (V. M. of Kuditini).
3. M. Ramaiya (C. I.).
4. B. N. Mahboob (S. I.).
5. Jalipati Honnurugadu.
6. Lingana Gowd.
7. Hanumanthu.
8. Lingana Gowd (V.M. of Gulyam).
9. Sheik Saheb Vali (P. C. 12).
10. C. Raghavendra Rao (M.C.).

For the Defence.

Nil.

The following exhibits were filed:—

For the Prosecution.

A/21—5—1942.	Complaint made by Begari Nagappa (P. W. 1) before the Village Magistrate of Kuditini.
B/21—5—1942.	Report of the Village Magistrate of Kuditini (P.W. 2) to the Police.
B(1)/21—5—1942.	Do. do. to the Stationary Sub-Magistrate, Bellary.
C/28—5—1942.	Panchanama for the identification of M. Os. 1 and 6 by P. W. 1.
D/26—5—1942.	Panchanama for the production of ten ten-rupee notes by A. 1's daughter.
E/26—5—1942.	Panchanama for the production of M. O. 6 by A. 1.
F/23—6—1942.	Panchanama for the production of Rs. 180/- by Hanumanthu (P. W. 7).
G/23—6—1942.	Panchanama for the production of M. Os. 2, 3 and 4 by A. 3.
H/5—6—1942.	Panchanama for the production of Rs.160/- by Jalipati Honnurugadu.
J/27—6—1942.	Panchanama for the identification of M. Os. 2, 3 and 4 by P. W. 1.
K, K(1) and K(2)/29-8-1942, 8-9-1942 & 18-9-1942.	Statements made by accused 1 to 3 in the committing court.

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For the Defence.
Nil.

MATERIAL OBJECTS PRODUCED IN EVIDENCE.

1. Shirt with green and black stripes.
2. One silver kadiyam.
3. Two gold padakams.
4. Brass tiffin box.
5. Small tin box.

5(a). Gold kattani containing 15 padakams.

6. Immanni bag with 70 rupee coins.
7. Ten ten-rupee notes.
8. Rs. 180/- in ten ten-rupee notes, and eighty rupee coins.
9. Rs. 160/- in eleven ten rupee notes and ten five rupee notes.

(Ild.) E. E. M.
Sessions Judge.

(True copy).

C. M. Lobo Sam
Sheristadar.

Number of words 2670 Charges Rs. 4—0—0.

In the High Court of Judicature at Madras.

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Thursday, the seventeenth day of December

one thousand nine hundred and forty two.

Present:-

The Honourable Mr.Justice Krishnaswami Ayyangar.

Criminal Appeal Nos.686 and 727 of 1942.

1.Bagari Rama
2.Bova Appayya. ... Appellants in C.A.686/42 (Accd.1 and 3) (Prisoners).

Kadi Linga alias Kali Linga ... Appt. in C.A.727/42 (2nd accused).

Appeals against the sentences passed by the Court of Sessions of the Bellary Division on 16-10-1942 in Case No.24 of the Calendar for 1942.

P.27 and 4

These appeals coming on for hearing under the provisions of Sec.no 131, Code of Criminal Procedure, and no one appearing on behalf of the appellants upon perusing the petitions of appeal and the judgment of the Court of Session, the Court delivered the following:

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Judgment.

No ground for interference. Appeal dismissed.

Sd. S. Ramadhar

Assistant Registrar ...

/True Copy

Sd. S. Sahadrisana Mudaliar 20-12-46.

Sub-Assistant Registrar

/True Copy/

Sessions Court, Bellary,
Dated 13th March 1946.

C. Madhavan.
Interpreter.

13/3

Convict no. 9946.

Central jail, Bellary.

Medical Ward

(20884 F/46)

(Jud-d ward) Home Dep

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G. O. Ms. No. 1577. dated 21.5.46

Prisoners - Release on medical grounds - Rule 514-A (2), P and R Manual, Vol II Central Jail Bellary - No. 9946, BOYA GADI LINGA alias GALI LINGA - Sanctioned

Precedent in G.O. 4158 Home 17.11.45 at (D)

page 1. c. F

Read the following

From The I.G. of Prisons No. 795/54/4 dated 18th May '46

ORDER -

In exercise of the powers conferred by section 401 of the Code of Criminal Procedure, 1898, H.E. The Governor of Madras hereby remits the unexpired portion of the sentences of imprisonment passed on the prisoner mentioned in the annexure to these proceedings subject to the condition that he shall be of good conduct and keep the peace for a period of two years.

20/5/46 G.O. 5.46

20/5/46

To

The I.G. of Prisons

The Supdt. Central Jail, Bellary

The D.M. Bellary.

The S.J. Bellary.

The High Court (Judl. & V.C.)

page 3. c. F

Annexure:

Central Jail Bellary

No. and name of Prisoner	Sentencing Court and case No.	Sentence with date
9946. BOYA GADI LINGA alias GALI LINGA.	Sub-Dvl. Tellers (1) ~~S.D. Tellers~~ Magistrate I. Bellary. C.C. No. 41/42 15/6/18	(1) R.I for 1 year. 20.6.42
	(2) S.J. Bellary S.C. No. 23/42 - 19/6 26 c F - 27/6 33	(2) R.I for 7 years. 19.c F 14.10.
	(3) S.J. Bellary S.C. No. 24/42	(3) R. years

[Contd from P. Pauly]

ff. 21

with the sentence imposed on him in ~~sec. 22(1)(a)~~ item (2)
16.10.42

Note:

Please see the letter from the I.G. of Prisons on page 1. c.f. and the connected records forwarded by him. The medical case sheet, the medical certificate, and the after care certificate are at pages 5, 7, & 11 ~~of the~~, 11. c.f. respectively. The D.M. Bellary has no objection to the release of the prisoner on medical grounds. As the unexpired portion of the sentence (3 yrs, 5 months and 14 days) exceeds 3 years, the release will be subject to the condition of good conduct for a period of two years.

c.f

page 13. c.f

page 3. c.f

Draft order overleaf is submitted for approval.

5/46 20-5-46

7/5 20/5/46 JP

9/5/46

[Issued as G.O. Ms. No. 15 J.T. d/ 21/5/46]